

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:	§	
	§	
MICHAEL AND MICHELLE BURTON,	§	CASE NO. 13-41669
	§	(Chapter 7)
DEBTORS	§	

**OBJECTION TO PROOF OF CLAIM NO. 3-2 OF
DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE**

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE HEREOF UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH RESPONSE. IF NO RESPONSE IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF A RESPONSE IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER

TO THE HONORABLE BRENDA T. RHOADES, U.S. BANKRUPTCY JUDGE:

Christopher J. Moser, Trustee ("Trustee") objects to Proof of Claim No. 3-2 filed by Department of the Treasury - Internal Revenue Service as a secured claim in the amount of \$1,009,572.18, an unsecured priority claim in the amount of \$65,595.52 and a general unsecured claim in the amount of \$7,896.63 ("Objection") as follows:

1. Trustee objects to the claim for the reason that the Trustee has not administered the collateral for the claim. All the funds in the estate were derived from the settlement of Chapter 5 avoidance claims upon which the IRS does not have a lien. The IRS claim does not qualify as a secured claim under Section 506(a) of the Bankruptcy Code since it does not encumber property of the estate.

2. Trustee requests that Claim No. 3-2 be disallowed as filed. However, Claim No. 3-2 should be allowed as n the amount of \$1,009,572.18 but allowed as an unsecured priority claim in

the amount of \$65,595.52 and a general unsecured claim in the amount of \$943,976.60.

WHEREFORE, PREMISES CONSIDERED Trustee prays that this Court enter an order disallowing Claim No. 3-2 as filed but allowing Claim 3-2 as an unsecured priority claim in the amount of \$65,595.52 and a general unsecured claim in the amount of \$943,976.60 and that Trustee be granted such other and further relief to which he may be justly entitled.

Respectfully submitted,

QUILLING, SELANDER, LOWNDS
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By: /s/ Christopher J. Moser
Christopher J. Moser

ATTORNEYS FOR TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection has been served via first class mail, postage prepaid, on this 16th day of January, 2015, upon the following:

Michale & Michelle Burton
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Flower Mound, TX 75022

James P. Moon
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U.S. Attorney
Eastern District of Texas
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Office of the U.S. Trustee
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Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

Internal Revenue Service
1100 Commerce St.
Stop MC 5024 DAL
Dallas, TX 75242

/s/ Christopher J. Moser